



4. Due to the nature of my official duties, I am familiar with the procedures followed by this office in responding to the FOIA requests made to EOUSA by Plaintiff, Jeffrey Stein.

### **CHRONOLOGY**

5. By letter dated September 13, 2011, transmitted via electronic mail, Plaintiff made a FOIA request to the DOJ's Justice Management Division's Mail Referral Unit. See Exhibit A.

6. Plaintiff's request specifically sought "a copy of all records in the Freedom of Information and Privacy Brief Bank, linked on the Department of Justice ('DOJ') intranet page [http://dojnet.doj.gov/research\\_resources/briefs.php](http://dojnet.doj.gov/research_resources/briefs.php)." See id.

7. Plaintiff further specified that his request "is not limited to the briefs themselves, but also includes all webpages associated with the brief bank." See id.

8. By letter dated October 17, 2011, the Mail Referral Unit notified Plaintiff that his request had been referred to EOUSA for a direct response. See Exhibit B.

9. By letter dated January 17, 2012, EOUSA acknowledged Plaintiff's request and assigned it Request Number 11-4569. See Exhibit C.

10. By letter dated March 8, 2012, EOUSA notified Plaintiff that it was withholding the brief bank in its entirety. EOUSA asserted FOIA Exemptions (b)(5), (b)(7)(C), and (b)(7)(E) as justification for its withholdings. See Exhibit D.

11. By letter dated March 12, 2012, but transmitted via electronic mail on March 11, 2012, Plaintiff administratively appealed EOUSA's determination to the Office of Information Policy (OIP). See Exhibit E.

12. By letter dated March 19, 2012, OIP acknowledged receipt of Plaintiff's administrative appeal and assigned it Appeal Number AP-2012-01654. See Exhibit F.

13. By letter dated August 23, 2012, OIP remanded Plaintiff's appeal to EOUSA "for further review and processing of the responsive records. If EOUSA determines that additional records are releasable, it will send them to you directly, subject to any applicable fees." See Exhibit G.

14. Prior to the initiation of this lawsuit, EOUSA had not responded to Plaintiff regarding his remanded appeal.

15. EOUSA now asserts FOIA Exemption (b)(5), specifically the attorney work product privilege, to withhold the brief bank in its entirety.

#### **EOUSA'S FOIA BRIEF BANK**

16. As Plaintiff points out in his initial request letter, EOUSA's brief bank is maintained on the Department of Justice's intranet – a collection of websites only available to and accessible by Department personnel. See Exhibit A.

17. The brief bank was created and maintained by an attorney on EOUSA's FOIA and Privacy Act Staff as a tool for use in anticipated FOIA litigation.

18. The brief bank, as constituted, consists of selected filings from FOIA lawsuits filed around the country in both the various United States District Courts and the Circuit Courts of Appeal.

19. Each case entry consists of basic case-caption information as well as a brief summary of the issues involved.

20. Some case entries contain what the author of the brief bank considered "key issues" – these, in turn, are linked to the specific briefs that address these issues.

21. Each brief identified in the brief bank lists the author of the brief, the date it was filed, and notes the specific component of the Department of Justice in which the author of the brief works.

22. For some case entries, the supporting declarations that formed the factual foundation of the brief are included for reference purposes.

**JUSTIFICATION FOR WITHHOLDING PURSUANT TO EXEMPTION (b)(5)**

23. FOIA Exemption (b)(5) exempts from disclosure records or information that are “inter-agency or intra-agency memorandums or letters which would not be available by law to a party . . . in litigation with the agency.” See 5 U.S.C. § 552(b)(5).

24. Principally, there are three categories of privileged information protected by this Exemption: attorney work product privilege, deliberative process privilege, and the attorney-client privilege.

25. The attorney work product privilege protects materials and information prepared by an attorney or at the direction of an attorney in anticipation of litigation, including the materials of government attorneys generated in litigation and pre-litigation counseling.

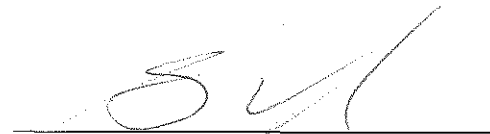
26. The information withheld pursuant to the attorney work product privilege consists of the creating attorney’s judgment in determining the significance (or lack thereof) of a given FOIA lawsuit for purposes of selecting specific cases for inclusion in the brief bank; the attorney’s identification of “key issues”; and the attorney’s editorial comments, summaries, legal theories, and opinions regarding each case selected.

**CONCLUSION**

27. Each step in the handling of Plaintiff's request has been entirely consistent with EOUSA's procedures adopted to ensure an equitable response to all persons seeking access to third-party records under the FOIA.

I declare under penalties of perjury that the foregoing is true and correct and that Exhibits A-G attached hereto are true and correct copies.

Executed this 24<sup>th</sup> day of January, 2013.

A handwritten signature in black ink, appearing to read 'S. Vanek', is written over a horizontal line.

Sean J. Vanek  
Attorney-Advisor, SAUSA  
EOUSA, FOIA Unit